

HCV HO Questions and Answers

Q1. Non-elderly and non-disabled families are required to be employed full time for at least 1-year in order to qualify for the program. Is there any continuous employment obligation once they are on the program?

A1. It is not a regulatory requirement. However, the PHA can include it as a local option for the non-elderly/nondisabled family to remain continuously eligible for the program. If they do include it as a local option, they must include the provisions in the homeownership portion of the Administrative Plan and allow for hardship provisions for loss of employment. In addition, PHAs are strongly encouraged to include the provisions in a local statement of homeownership obligations, since this requirement is not on the HUD Statement of Homeownership Obligation Form. An example of a continuous employment provision could be as follows:

Continuous Employment Obligations for a non-elderly/non-disabled family

- *The applicant head of household, spouse or an adult on the mortgage document must remain continuously employed (no less than 30 hours per week) while participating in the program.*
- *Part-time employment of multiple adults totaling over 30 hours per week, does not constitute full-time employment.*

For continued eligibility purposes, continuous employment is defined two ways. Continuous employment by the head, spouse or an adult member of the household on the mortgage as full time employment (average of 30 hours per week) with no gap in employment lasting more than four weeks total (30 hours x 48 weeks = 1,440 hours) or earned income received by the head, spouse or co-head during the past year greater than the federal minimum wage times 2,000 hours.

The employment requirement is not applicable to elderly or disabled families.

Mitigating Circumstances

If a nonelderly/nondisabled family is subsequently determined by the PHA to now qualify as an “elderly” or “disabled family,” as defined by HUD, the full-time employment requirement is no longer applicable for that family.

The PHA will consider mitigating circumstances where certain lapses in employment prohibit the family from meeting its continuous employment obligation. These include receipt of Unemployment Insurance Benefits due to layoff; absences defined under the Family Medical Leave Act; receipt of Workman’s Compensation benefits.

The PHA will allow week-for-week substitutions whenever any of these benefits are received.

A participant, who is employed but is on leave from work due to maternity leave, FMLA or is receiving unemployment or worker's compensation, is exempt from the full-time employment requirement during the period of approved leave from work. A participant must return to full-time employment within 30 days after exhaustion of applicable benefits. Willful failure to return to full-time employment (30 hours per week), after 30 days, will generate a 60-day Notice to Correct. Failure to correct will result in a correctable 30-day Notice of Termination.

Consideration of other mitigating circumstances is at the discretion of the local HCV Homeownership Coordinator with a recommendation to the HCV Program Administrator. Determinations of the Program Administrator are made on a case-by-case basis. The termination of benefits is subject to the HCV grievance process.

Q2. Does 24 CFR Parts 5, 92 and 908 issued on January 27, 2009 change the definition of income for calculating income for a HCV HO family and do the other provisions also apply to a homeownership family?

A2. Yes, the provisions of the refinement of income, social security numbers, and EIV provisions apply to the HCV Homeownership Program.

Q3. The IRS has rendered an opinion on income taxes, interest and real estate taxes for participants in the HCV Homeownership Program. Is a family required to prorate Real Estate Tax and Interest Deductions based on the family's HAP and family share if they itemize their deductions?

A3. Yes. The Internal Revenue Service (IRS) on August 28, 2001 issued an information letter that addresses this question. An information letter has no binding power on the IRS or HUD and is for advisory purposes only. The IRS information letter addresses two issues, (1) whether or not HCV HO Housing Assistance Payments (HAP) are includable as income to the receiving family, and (2) whether the family receiving HCV HO HAP may deduct the full amount of the mortgage interest and real estate taxes paid on the family's home. Issue one is addressed by the IRS Information Letter, dated August 28, 2001, by stating that, "... Section 8 homeownership assistance payments are considered to be general welfare benefits that are **not** includible in the income of the recipients." (Emphasis added.) The HCV HO HAP is not included in the recipient family's income for income tax purposes. Therefore the family should not be issued a 1099-MISC for the HAP provided.

Now looking at issue two, the deductibility of mortgage interest and real estate taxes is governed by the Internal Revenue Code (Code). Qualified residence interest may be

deducted by taxpayers under Section 163(h)(2)(D) of the Code. State, local and foreign real property taxes for the taxable year in which they were paid or accrued may be deducted by the taxpayer under Section 164(a)(1) of the Code. However as the HCV HO HAP is not included in the receiving family's income, Section 265(a)(1) of the Code applies. Section 265(a)(1) provides that if an allowable deduction is based on a class of wholly exempt income then the allowable deduction will not be allowed. The conclusion that the IRS information letter, dated August 28, 2001, was that, "§ 265(a)(1) would probably be viewed as prohibiting the recipients of assistance under the Section 8 Homeownership Program from deducting the **full** amount of mortgage interest and real estate taxes on the home they have purchased." (Emphasis added). This conclusion does leave open a partial deduction for mortgage interest and real estate taxes for the HCV HO family. The amount of the partial deduction would be based on the percentage of the family share of the annual homeownership expenses. Below is an example of the deduction calculation.

The monthly homeownership expense of \$1,200 and HAP of \$300, then the effective recertification date of July shows an income increase, which decreases the HAP to \$100. The homeownership expense and the HAP are based on the calendar year not the family's recertification year. This would make an Annual Homeownership Expense of \$14,400 and the Annual HAP of \$2,400 which makes the Family Share Homeownership Expense of \$12,000 (\$14,400-\$2,400). The family is paying 83.3% ($\$12,000/\$14,400$) of the Annual Homeownership Expense and therefore the family would be allowed a deduction of 83.3% of the Annual Mortgage Interest and Real Estate Taxes. If the Annual Mortgage Interest was \$6,000 reported by the lender, then the family could then deduct \$4,998 ($\$6,000 \times 83.3\%$) if itemizing this deduction. If the real estate property tax reported by the lender was \$2,000, then the family could only deduct \$1,666 ($\$2,000 \times 83.3\%$) if itemizing this deduction.

Both the PHA and the family will be providing information for this calculation. The PHA will provide the Annual HAP. The family will provide the actual Annual Homeownership Expense. The PHA may have an estimated Annual Homeownership Expense but the family will have their actual out-of-pocket expenses. The PHA may advise the family to take the PHA provided information and the families actual Annual Homeownership Expense to a tax professional for review and calculation of the exact deduction percentage as the PHA is not a tax professional and should not be providing tax advice. The above calculation would only need to be done if the HCV HO family is itemizing their deductions. If the HCV HO family is taking the standard deduction, the family will not be deducting the mortgage interest or real estate taxes. Further information and worksheets are available at the HCV Homeownership Training being hosted around the country.

Q4. Should a PHA issue the IRS Form 1099-MISC to a HCV HO family?

A4. No. The Internal Revenue Service (IRS) on August 28, 2001 issued an information letter that addresses this question. The IRS information letter, dated August 28, 2001, states, "... Section 8 homeownership assistance payments are considered to be general welfare benefits that are **not** includible in the income of the recipients." (Emphasis added.) Therefore the PHA must not issue an IRS form 1099-MISC to the family receiving HCV HO HAP. IRS form 1099-MISC is only issued when a person has miscellaneous income and the HCV HO HAP is not income so IRS form 1099-MISC must not be issued. PHA may have to adjust their accounting systems so the IRS forms 1099-MISC are issued to owners under the HCV rental voucher program and they are not issued to the HCV HO families.

Q5. Will a change of family status from non-elderly to elderly or non-disabled to disabled family affect the continuing eligibility and benefits of the HCV HO program for the family?

A5. They may affect eligibility depending on the change. A family's status can change in the following ways: non-elderly / non-disabled to disabled; non-elderly / non-disabled to elderly; elderly or disabled to non-elderly / non-disabled. Family status is determined by the status of the head, co-head, spouse or sole-member of the family. In order to be determined an elderly or disabled family the head, co-head, spouse or sole-member must be elderly (62 years or older) or disabled, respectively. The length of homeownership assistance under the HCV HO program is determined by Family Status and the subsidy times lines are provided in 24 CFR 982.634. A non-elderly / non-disabled family may receive up to 15 years of assistance on a first mortgage of 20 years or longer and up to 10 years of assistance on a first mortgage of less than 20 years. An elderly / disabled family may receive assistance for as long as the family is eligible regardless of the length of the first mortgage. The affects of a change in family status during the period of assistance are addressed in 24 CFR 982.634(c). Let's look at each of the above three family status changes separately.

- **Non-Elderly / Non-Disabled to Disabled**

Depending on the length of the first mortgage a non-elderly / non-disabled family may receive up to 10 or 15 years of subsidy assistance. If during the term of homeownership assistance; the head, co-head, spouse or sole member of the family becomes classified as disabled then the family status would change to a disabled family. The affect of this family status change is addressed in 24 CFR 982.634(c)(2), "... In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family." Therefore by regulation the newly classified disabled family would be entitled to receive homeownership assistance for as long as the disabled family is eligible.

- **Non-Elderly / Non-Disabled to Elderly**

Depending on the length of the first mortgage a non-elderly / non-disabled family may receive up to 10 or 15 years of subsidy assistance. If during the term of homeownership assistance; the head, co-head, spouse or sole member of the family becomes classified as elderly then the family status would change to an elderly family. The affect of this family status change is addressed in 24 CFR 982.634(c)(2), "In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance." Therefore by regulation there would be no change in the term of homeownership assistance for the newly classified elderly family. The term of homeownership assistance would remain the same as determined at the time of closing, 10 or 15 years from the date of closing depending on the length of the first mortgage.

Elderly or Disabled to Non-Elderly / Non-Disabled

A currently disabled family or, at the time of closing, an elderly family is entitled to homeownership assistance for as long as the family is eligible. If during the term of homeownership assistance; the head, co-head, spouse or sole member of the family is reclassified as non-elderly and non-disabled then the family status will change to a non-elderly / non-disabled family. This situation may arise when an elderly or disabled co-head or spouse moves out of the home or passes away and the remaining head, co-head or spouse is non-elderly / non-disabled. The affect of this family status change is addressed in 24 CFR 982.634(c)(3), "If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part)."

Therefore by regulation the term of homeownership assistance for the newly classified non-elderly / non-disabled family would be 10 or 15 year from the date of closing depending on the length of the first mortgage as described above. If the applicable 10 or 15 year term of homeownership assistance has expired, then the family would receive 6 months of homeownership assistance from the date of reclassification and then the family would be removed from the program.

Q6. Is the net cash value of the home included as an asset for purposes of calculating the Annual Income for the HCV Homeownership family?

A6. The net cash value of the HCV HO family's home is not considered an asset to be included in the family's annual income calculation for the first 10 years of the family's ownership of the home. 24 CFR 5.603(b)(4) states, "For purposes of determining annual income under Sec. 5.609, the term ``net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home." While most HCV HO program homeowners are still in their 10 year grace period, some families are approaching their 10 year anniversary of homeownership. Once the family hits the 10 year mark, PHAs will need to include the net cash value of the home in the family's annual income calculation. 24 CFR 5.603(b)(1) states, "Net cash value after deducting reasonable costs that would be incurred in disposing of real property" Net cash value is not the fair market value of the home. Net cash value is the fair market value minus any outstanding liens on the property minus any transaction costs that would be incurred in order to liquidate the home. Basically, the net cash value of the home is the cash in the homeownership hand after the homeowner refinances the home and pulls out all of the home's equity and pays off any loans secured by the home. The family is not required to liquidate the equity in the home, the PHA should use estimates from local area lender in order to determine reasonable transaction costs. Once the net cash value of the home is determined, that amount is added to the balance of the net family assets and the normal income calculation pertaining to assets is applied.

Q7. Does the zero HAP for 180-day rule for the HCV Rental Program apply to the HCV HO program?

A7. Not exactly. While the rule is similar, the HCV HO Program allows for additional discretion by the PHA. For example, the PHA can adopt hardship criteria that would allow the family to extend past the 180 day provision. An example of a policy could be as follows:

Participation in the HCV Homeownership Program shall continue until such time as the assistance payment amounts to zero for a period of 180 days. At that time the family will no longer be eligible and the HAP will be terminated. However, should the family go to zero HAP, for 180 consecutive days, the SHA reserves the right to extend the period past 180 days, should there be documented extenuating circumstances for an extension to the time-period. Such documented extenuating circumstances include but is not limited to:

- Death in the family
- Loss of employment or income due to no fault of the family
- Documentation of a medical or financial hardship beyond the control of the family for a member of the assisted household

Q8. Is there a specific rule on what payment standard to apply at the family's recertification?

A8. Yes. 24 CFR 982.635 is the regulation that covers the use of the payment standard for the initial closing calculation of the Housing Assistance Payment (HAP) and for its use at the time of recertification. The definition of the payment standard at the time of the initial closing is provided by 24 CFR 982.635(b)(1), "The payment standard for a family is the lower of: (i) The payment standard for the family unit size; or (ii) The payment standard for the size of the home." The payment standard based on the size of the family must be compared to the payment standard for the size of the home being purchased and the lesser of the two payment standards must be used. Additionally 24 CFR 982.635(b)(2) provides that if the home is in an exception payment standard area, the PHA must use the exception payment standard regardless of the payment standard determination under 24 CFR 982.635(b)(1). For example, if a PHA's rules allow a single mother with four children four bedrooms, where the four bedroom payment standard is \$1,200 but the family finds and purchases a three bedroom home, not in an exception payment standard area, where the three bedroom payment standard is \$1,000. The three bedroom, \$1,000 payment standard would be used in the calculation process.

The definition of the payment standard at the time of recertification is provided by 24 CFR 982.635(b)(3), "The payment standard for a family is the greater of: (i) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the commencement of homeownership assistance for occupancy of the home; or (ii) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home."

24 CFR 982.635(b)(3) requires the PHA to compare the dollar amount of the payment standard at the time of closing to the payment standard at the time of recertification based on the family's current eligibility situation and then the PHA will take the **greater** of the two. Continuing the example from above, at recertification three years after closing the single mother reports that two of her children have moved out, leaving her and two children. Based on the PHA's occupancy rules this family now qualifies for a two bedroom home and the current two bedroom payment is \$950. The family still lives in the same three bedroom home and the current three bedroom payment standard is \$1,100. At the time of recertification, the PHA compares the current payment standards based on family size (\$950) and house size (\$1,100) and takes the lesser of the two. Solely looking at the recertification date leads to a payment standard of \$950. However 24 CFR 982.635(b)(3) requires the HCV Homeownership program to go one step further and compare the payment standard based on recertification date to the dollar amount of the payment standard used at the time of closing. In this example, the dollar amount of the payment standard used at the time of closing was \$1,000. The \$1,000 is compared to \$950 and the **greater** of the two is used. Therefore \$1,000 would be used to continue the calculation process and compare the payment standard to the homeownership expense. This part of the regulation sets a floor that the payment standard amount cannot go below the original

payment standard dollar amount during the term of homeownership assistance. The payment standard floor provides security to both the homeowner family and the family's mortgage lenders.

The payment standard floor can only be changed under one circumstance and that is when a family sells its home under the program and purchases a new home and the term of the homeownership assistance has not expired. The new payment standard floor will then be the dollar amount of the payment standard used at the time on the new home closing as calculated under 24 CFR 982.635(b)(1) or (b)(2).

Q9. Does the 40% of the adjusted income test rule on the maximum family share on the initial occupancy of the unit apply to the HCV HO program?

A9. No. Generally the rules and regulations of the rental voucher program are applicable to the HCV Homeownership program. However 24 CFR 982.641 addresses specifically which provisions of the rental voucher program apply or do not apply to the HCV Homeownership program. Under the rental voucher program 24 CFR 982.508 states, "the family share must not exceed 40 percent of the family's adjusted monthly income." 24 CFR 982.508 is in subpart K of the voucher program regulations. The applicability of subpart K to the HCV Homeownership program is addressed in 24 CFR 982.641(f) and states, "Except for those sections listed below, the requirements of subpart K of this part (Rent and Housing Assistance Payment) (Secs. 982.501-521) **do not apply** to assistance under the homeownership option: (1) Section 982.503 ...; (2) Section 982.516 ...; and (3) Section 982.517" (Emphasis added). Only Sections 982.502, 516 and 517 can be applied to the HCV Homeownership program.

Therefore because 24 CFR 982.508 is not listed as an applicable section of subpart K, **it does not apply to the HCV Homeownership program.** The family share for HCV HO family may exceed 40 percent. However, the PHA may, by local rule, adopt an affordability cap. An affordability cap is a good way for a PHA to have a uniform way of keeping their HCV HO families from purchasing too much house and potentially not being able to keep up financially with the increase of homeownership expenses in the future. While implementing a 40 percent affordability cap would keep the rental and homeownership programs on equal footing, there are compelling reasons for the PHA to allow a higher affordability cap. A compelling reason is that the homebuyer family has many more variables that make up the homeownership expenses than the rental family has in their gross rent. Gross rent is only contract rent plus utility allowance while the monthly homeownership expenses include the principal and interest on initial mortgage debt, any refinancing or such debt and mortgage insurance premium incurred to finance purchase of the home; real estate taxes and public assessments on the home; home insurance; PHA allowance for maintenance

expenses; PHA allowance for cost of major repairs and replacements; PHA utility allowance for the home; principal and interest on mortgage debt incurred to finance costs for major repairs, replacements, or improvements for the home (which may include debt incurred by the family needed to make the home accessible for a family member with disabilities if the PHA determines allowances of such cost is needed as a reasonable accommodation); condo fees or HOA fees for a cooperative unit, and land lease payments (where a family does not own fee title to the real property on which the home is located in accordance with the requirements of 24 CFR 982.628(b)). See 24 CFR 982.635(c). The homeownership expenses are unavoidable and a slightly higher affordability cap may be a reasonable risk. An affordability cap of 40 to 50 percent would allow the family to absorb the additional homeownership expenses without overstressing the family. If the PHA uses an affordability cap, it would need to look at its local area and circumstance to determine a reasonable amount.

Q10. Are there different rules on determining minimum income for eligibility of the elderly, non-elderly, disabled and non-disabled families?

A10. Yes. The minimum income requirements for eligibility must be met at the time of homeownership housing assistance payments (HAP) begins. The process for calculating the required minimum income is laid out in 24 CFR 982.627(c). Depending on family status, the minimum income requirement can be different. For a disabled family the minimum income requirement is, "... the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone ... multiplied by twelve." 24 CFR 982.627(c)(1)(i). For non-disabled, non-elderly and elderly families the minimum income requirement is, "...the Federal minimum wage multiplied by 2,000 hours." 24 CFR 982.627(c)(1)(ii). Neither of these dollar amounts are set in stone. As the Federal SSI changes, due to cost of living adjustments, the disabled minimum income will change, also as the Federal minimum wage adjusts, as it did in 2008 and will in 2009, the non-disabled, non-elderly, and elderly minimum income will change. The PHA must look forward to the date that homeownership HAP payments begin to determine the proper minimum income requirement. For example, if a non-elderly / non-disabled family closed on a HCV homeownership home on July 25, 2008, the PHA would need to be aware that on July 24, 2008, the Federal minimum wage changed \$5.85 per hour to \$6.55 per hour. The non-disabled / non-elderly family would need to have \$13,100 (\$6.55 X 2000 hours) in income to meet the minimum income requirement not the \$11,700 (\$5.85 X 2000 hours) in income the family would have need just two days earlier. As a note, the Federal minimum wage is scheduled to increase to \$7.25 per hour on July 24, 2009 therefore \$14,500 (\$7.25 X 2000 hours) will be required to meet the minimum income for a non-disabled, non-elderly and elderly family.

The use of Temporary Assistance for Needy Families (TANF) and general welfare assistance in calculating the family's minimum income must also be address. 24 CFR 982.627(c)(2) states,

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at Sec. 5.403(b) of this title), the PHA shall not count any welfare assistance received by the family in determining annual income under this section.

(ii) The disregard of welfare assistance income under paragraph (c)(2)(i) of this section only affects the determination of minimum annual income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly or disabled family, the PHA shall include welfare assistance for the adult family members who will own the home in determining if the family meets the minimum income requirement.

24 CFR 982.627(c)(2).

This provision creates two groups when addressing the use of TANF in calculating minimum income. The first group is non-elderly / non-disabled families and for these families TANF payment will not be included when calculating income for minimum income HCV HO eligibility requirement only. The use of TANF in the calculation of income for admission to the general voucher program, the family's total tenant payment (TTP) or family's homeownership HAP are not affected. The second group is the elderly / disabled families; for these families TANF will be included when calculating the family's income for the HCV HO minimum income requirement. The minimum income threshold is different for the elderly and the disabled family but both families can include TANF to meet their respective minimum income requirement.

The final piece to determining the minimum income requirement for the HCV HO program allows the PHA to set a minimum income higher than the HUD minimum income. 24 CFR 982.627(c)(3) provides,

A PHA may establish a minimum income standard that is higher ... for either or both types of families. However, a family that meets the applicable HUD minimum income requirement ..., but not the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if: (i)

The family demonstrates that it has been pre-qualified or pre-approved for financing; (ii) The pre-qualified or pre-approved financing meets any PHA established requirements ... for financing the purchase of the home (including qualifications of lenders and terms of financing); and (iii) The pre-qualified or pre-approved financing amount is sufficient to purchase housing that meets HQS in the PHA's jurisdiction.

24 CFR 982.627(c)(3).

A PHA may set a higher minimum income requirement because the cost of housing in their area makes the HUD minimum income impractical to purchasing a home, even with the addition of the HAP to the family's buying power. The PHA may set a minimum income of any or all of the family status types and those minimum incomes may be different but they must be higher than the HUD minimum income for each respective group. The caveat that HUD did implement with allowing the PHA to set higher minimum income is that if a family can show they have been pre-qualified for financing with a loan that meets the PHA's loan standards **and** the loan is with a lender that meets the PHA lender qualifications **and** the amount of the pre-qualified loan is enough to purchase a HQS compliant home in the PHA's jurisdiction **and** the family meets its respective HUD minimum income, then PHA must consider the family as meeting the minimum income requirement.